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No. 71-764

In the Supreme Court of the United States

OCTOBER TERM, 1971

CHARLES DEE SCOTT AND DOYLE MONROE CROSS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Northern District of Georgia, petitioners were convicted of having made an unauthorized connection into a telephone company line in Georgia and then placing long distance calls without payment by giving the telephone numbers of other persons who did not know petitioners, in violation of 18 U.S.C. 1343. Each was sentenced to two years' imprisonment. The court of appeals affirmed (Pet. App. A; 448 F. 2d 581).

Petitioners principally contend that this type of scheme does not come within the scope of 18 U.S.C. 1343. As the court below held, however, the terms of the statute embrace the use of interstate telephone

facilities to defraud the telephone company itself, as well as other victims. See *Brandon* v. *United States*, 382 F. 2d 607, 611 (C.A. 10).

Petitioners also contend that the closing argument of the prosecutor was improper and that the trial judge erred in refusing to give an instruction on good faith. These contentions are without merit and are fully answered in the opinion below.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

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